

Message Text

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PAGE 01 STATE 084209

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ORIGIN ARA-10

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FM SECSTATE WASHDC

TO AMEMBASSY GUATEMALA PRIORITY

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E.O. 11652: N/A

TAGS: EWWT, GT, US

SUBJECT: GOG SHIPPING DISCRIMINATION

REFERENCE: GUATEMALA 2276

1. RESPONSE TO PRESIDENT LAUGERUD'S FEBRUARY 24 LETTER
TO PRESIDENT FORD BEING FORWARDED SEPTEL. DEPARTMENT
WILL TRANSMIT SHORTLY BRIEF GENERAL RESPONSE TO QUESTIONS
RAISED IN PALOMO MEMO TO EFFECT WE ARE UNABLE TO AGREE
WITH EITHER GOG'S STATEMENTS OR CONCLUSIONS. EMBASSY
WILL BE REQUESTED TO MAKE SPECIFIC ORAL REPRESENTATIONS
TO REEMPHASIZE THE NEED OF GOG TO ACT EXPEDITIOUSLY.
WE SEE NO MERIT IN A POINT-BY-POINT REFUTATION OF THE
PALOMO MEMO WHICH IS FACTUALLY INCORRECT IN MANY INSTANCES.

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PAGE 02 STATE 084209

2. AS EMBASSY POINTS OUT, PALOMO'S MEMO DOES MISCONSTRUE MECHANICS OF PROPOSED FMC COUNTER MEASURE. HOWEVER, THE QUOTE EQUALIZATION UNQUOTE ASPECTS OF THE FMC PROJECTED FEE SEEMS TO HAVE BEEN OVER-EMPHASIZED. POINT IS THAT THE GOG, THROUGH DECREES 41-71, HAS CREATED A DISCRIMINATORY SITUATION WHICH IS ADVERSE FOR U.S. FOREIGN COMMERCE. THE USG RESPONSE, IN THE ABSENCE

OF GOG REMEDIAL STEPS, WILL BE INITIALLY A COUNTERVAILING ACTION WHOSE IMPACT, ACCORDING TO FMC REGULATIONS, SHOULD BE AS SEVERE AS THAT OF THE DISCRIMINATORY PRACTICE. THERE IS NO REQUIREMENT THAT IT BE A CARBON COPY AND/OR MIRROR GOG PRACTICES.

3. RE EMBASSY'S REQUEST FOR CLARIFICATION (PARA 2, REFTEL) OF PALOMO'S CLAIM, PARA 5.C. OF MEMO, IT IS CORRECT THAT A NUMBER OF L.A. COUNTRIES HAVE SHIPPING LEGISLATION RESERVING 50 PERCENT OF THEIR TOTAL TRADE TO THEIR NATIONAL FLAG CARRIERS. USG MAKES EVERY EFFORT TO LIMIT DAMAGING AND DISCRIMINATORY EFFECTS OF SUCH LEGISLATION ON U.S. FLAG CARRIERS AND THIRD FLAG CARRIERS IN OUR TRADE. IN RESPONSE TO SUCH LEGISLATION, A NUMBER OF OUR LINES HAVE ENTERED INTO EQUAL ACCESS AND/OR POOLING AGREEMENTS WHICH HAVE BEEN APPROVED BY THE FMC, THOUGH IN SOME INSTANCES ONLY AFTER CHANGES THEREIN TO MEET FMC CONCERNS AND U.S. LEGAL REQUIREMENTS. PALOMO'S CHARACTERIZATION OF SUCH L.A. LEGISLATION AS BEING HARSHER THAN GOG PRACTICES UNDER DECREE NO. 41-71 IS NOT ACCURATE. DECREE NO. 41-71 RESULTS NOT ONLY IN UP TO 80 PERCENT OF CARGO IN GULF BEING TRANSPORTED ON GUATEMALAN FLAG LINES BUT ALSO IN A POSSIBLE NATION-WIDE DIVERSION OF CONTAINERIZED CARGO TO SOUTH FLORIDA PORTS FOR SHIPMENT ON GUATEMALAN FLAG OR ASSOCIATED CARRIERS. THE DEPARTMENT IS UNAWARE OF ANY PAST OR PRESENT FOREIGN SHIPPING LEGISLATION WHOSE REAL EFFECTS ARE THE EQUAL OF GUATEMALAN PRACTICES UNDER DECREE 41-71.

4. INFORMATION (PARA 5, REFTEL) RE TYPE AND SCOPE OF AGREEMENT DELTA IS SEEKING WITH FLOMERCA IS INTERESTING. IF FLOMERCA, AND THEIR LEGAL COUNSEL IN THE U.S., WISH TO BELIEVE DELTA STATEMENTS AND ACCEPT DELTA'S CLAIMS LIMITED OFFICIAL USE

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PAGE 03 STATE 084209

AS SET FORTH IN PARA 6, REFTEL, IT IS NOT OUR ROLE TO DISSUADE THEM. HOWEVER, AS DEPARTMENT HAS INDICATED PREVIOUSLY, ANY AGREEMENT INKED BY DELTA AND FLOMERCA MUST BE SUBMITTED TO FMC FOR APPROVAL AND APPROVAL MUST BE RECEIVED BEFORE AGREEMENT CAN BE IMPLEMENTED. IF PROTESTED BY OTHER LINES, WHICH IS CONSIDERED A VERY LIKELY EVENTUALITY, LENGTHY HEARING PROCEDURES MAY BE NECESSARY. GIVEN THE FOREGOING SCENARIO AND THE TYPE/SCOPE OF

AGREEMENT OUTLINED PARA 5 REFTTEL, IT IS THE DEPARTMENT'S EDUCATED GUESS THAT FMC APPROVAL WOULD NOT, REPEAT NOT, BE FORTHCOMING EVEN AFTER LENGTHY HEARINGS. IN ADDITION, EVEN IF AN AGREEMENT WERE APPROVED, NO LINE(S) SERVING THE GULF-CARIBBEAN AREA IN OUR TRADE WOULD BE PRECLUDED FROM CHALLENGING THE AGREEMENT BEFORE THE FMC, AND SUCH LINE(S) COULD EVEN TAKE THE FMC TO COURT IN THE ABSENCE OF RECEIVING SATISFACTION.

5. SHOULD DELTA AND FLOMERCA SIGN AN AGREEMENT, DELTA CAN STATE TO BOTH THE FMC AND STR THAT THE BASIS FOR ITS COMPLAINT NO LONGER EXISTS AND REQUEST A DISCONTINUATION OF BOTH SECTION 19 AND SECTION 30L ACTIONS. WHILE THIS COULD POSSIBLY RESULT IN A TERMINATION OF PENDING STR ACTION, IF TRADE POLICY REVIEW GROUP AGREES, IT IS VERY DOUBTFUL THIS EVENT WOULD OVERCOME THE CONCERNS OF THE FMC. AS THE EMBASSY IS AWARE, DELTA SERVES ONLY THE GULF AND ANY AGREEMENT THAT MAY BE CONCLUDED, EVEN IF IT WERE APPROVED, WOULD COVER ONLY THE GULF-GUATEMALAN TRADE. HOWEVER, THE FMC'S SECTION 21 ORDERS ALSO COVERED THE ATLANTIC-GUATEMALA TRADE WHERE THE EFFECTS OF DECREE 41-71 ARE QUALLY ADVERSE, PARTICULARLY WITH RESPECT TO ALLEGED FUNNELING OF THE MAJORITY OF U.S. CONTAINERIZED SHIPMENTS DESTINED FOR GUATEMALA THROUGH MIAMI THUS BY PASSING NORMAL ROUTINGS.

6. DEPARTMENT BELIEVES THAT PRECLUSION OF SECTION 19 APPLICATION COULD BE EXPECTED ONLY VIA A DISCONTINUATION OF OF THE DISCRIMINATORY POLICY PURSUED UNDER DECREE NO. 41-71 IN GUATEMALA'S TRADE WITH THE U.S. HOW THIS IS DONE IS A MATTER FOR THE GOG TO DECIDE. AN INTERIM MOVE IN THIS DIRECTION WOULD BE FOR THE GOG TO AUTHORIZE BLANKET WAIVERS IN THE GULF AND ATLANTIC TRADES AND LIMITED OFFICIAL USE

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PAGE 04 STATE 084209

THEN PROCEED IN AN EXPEDITIOUS MANNER TO OVERHAUL ITS POLICY BASED ON DECREE 41-71 WHICH IS THE CRUX OF THE PROBLEM. FAILURE ON THE PART OF THE GOG TO ACT SOON WILL LEAVE IT FACE-TO-FACE WITH THE REAL POSSIBILITY OF THE IMPOSITION OF COUNTERVAILING MEASURES IN DUE COURSE. BOTH THE STR AND FMC CAN BE EXPECTED TO REVIEW THE WHOLE MATTER BETWEEN NOW AND APRIL 15. IT WOULD NOT BE INCONCEIVABLE FOR THE FMC IN MID-APRIL OR SHORTLY THEREAFTER TO SET A NEW DATE FOR INVOKING SECTION 19 AGAINST GUATEMALA. KISSINGER

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